



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/404,923	09/24/1999	FRANCOIS DOUEZY	109894-129682	8917

22907 7590 09/04/2003

BANNER & WITCOFF
1001 G STREET N W
SUITE 1100
WASHINGTON, DC 20001

EXAMINER

THOMSON, WILLIAM D

ART UNIT	PAPER NUMBER
----------	--------------

2123

DATE MAILED: 09/04/2003

17

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Applicati n N .

09/404,923

Applicant(s)

DOUEZY ET AL.

Examiner

William D. Thomson

Art Unit

2123

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 06 August 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☒ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☒ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-20.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☒ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). 14.
10. ☐ Other: _____

W-D Thomson
R. 2123

Continuation of 2 and 5. NOTE:

The proposed amendments to claim 3 does not overcome the prior art rejections, this is the same means for performing the same operation as finally rejected and recited in claim 8. However, if Applicant's assertion that claim 8 had not been specifically addressed in the final rejection; was intended to mean that these limitations are not equivalent then these would be considered new limitations that would raise new issues requiring further consideration and/or searching. Further, the rejections of claim 8 recited on page 3, paragraph 8 of the prior examiner's final Office action. As to claims 14 and 15, though amendments have been provided they are not equivalent to the intentions of the prior examiner's statement regarding allowable subject matter as stated in the final rejection, paper 10. Claims 5 and 6 have not been amended at all. Claims 14-16 have not been amended to include all the of the limitations recited in claims 14, 15 and 16 and claims 10 and 13, together. Claim 16 was also left unamended. The prior examiner did not state "but would be allowable if rewritten in independent form including all of the limitations of their respective base claims and respective intervening claims." Which appears to be how Applicant has interpreted the prior examiner's statements of allowable subject matter.

Moreover, the proposed amendments to the specification raise new issues of possible new matter. Furthermore, the arguments pertaining to unamended claims have already been considered by the previous examiner in making the rejection final. Applicant's IDS, paper 14, has been considered, noting that the final rejection by the Japanese Patent office is not prior art. However the citation of JP 07-262037 may represent another possible prior art reference to be asserted against the claims as rejected in the final Office Action. The present examiner can only consider the Japanese final Office action a document that references a piece of prior art that could be asserted in a formal rejection. A rejection based on this new piece of prior art has not been made since such a rejection would be cumulative to the rejections that formally stand in the final Office Action, paper 10.

Examiner notes that the final Japanese rejection was provided to show Applicant's not having the art more than three months prior and to show diligence in disclosing this prior art citation. Examiner appreciates Applicant's candor in discharging their duties which further included providing both the prior art references with respective partial translations, papers 14 and 15, as well as those reference provide in paper 9. The prior examiner had reviewed IDS statements in paper 7 and 9, as has the present Examiner. The newly submitted IDS, paper 14, has also been considered.

Cyber
W. T. T. T. T.
ASL 2123